



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0568; FRL-10003-85-Region 10]

Air Plan Approval; Washington; Update to the Adoption by Reference, Energy Facility

Site Evaluation Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising the Washington State Implementation Plan (SIP) to approve updates to the Energy Facility Site Evaluation Council (EFSEC) air quality regulations. The EFSEC regulations apply to major energy facilities in the State of Washington and establish permitting requirements and emissions standards for such facilities. The EFSEC regulations primarily adopt by reference the Washington Department of Ecology (Ecology) general air quality regulations for program implementation. We are approving EFSEC's updated adoption by reference to include certain changes to Ecology's general air quality regulations since EFSEC's last adoption by reference, consistent with prior approvals.

DATES: This final rule is effective **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2019-0568. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov>, or please contact the person listed in the FOR FURTHER INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we,” “us,” or “our” is used, it means the EPA.

I. Background

By statute, EFSEC has jurisdiction for managing the air program with respect to major energy facilities in the State of Washington. See Chapter 80.50 of the Revised Code of Washington (RCW). The EFSEC air quality regulations are contained in Chapter 463-78 Washington Administrative Code (WAC) *General and Operating Permit Regulations for Air Pollution Sources*. These EFSEC regulations rely primarily on the adoption by reference of the corresponding Ecology general air quality regulations contained in Chapter 173-400 WAC *General Regulations for Air Pollution Sources*. Many of the provisions of Chapter 173-400 WAC adopted by reference remain unchanged since the EPA’s last approval of EFSEC’s regulations and were not resubmitted as part of Washington’s September 30, 2019, SIP revision. Other revised Chapter 173-400 WAC provisions were not submitted for approval as part of this current SIP revision, including certain subsections of WAC 173-400-030 and 173-400-040. Specifically, subsections WAC 173-400-030(30) [subsequently renumbered to (32)], WAC 173-400-030(36) [subsequently renumbered to (38)], and WAC 173-400-040(2) were not submitted by Ecology and EFSEC as part of this action. For those sections, the versions previously

approved by the EPA in the Federal Register at 82 FR 24533 (May 30, 2017) remain in the SIP.

On October 29, 2019, we proposed approving EFSEC's updated adoption by reference to include certain changes to Ecology's general air quality regulations since EFSEC's last adoption by reference (84 FR 57836). The reasons for our proposed approval were stated in the proposed rule and will not be re-stated here. The public comment period for our proposed action ended on November 29, 2019. We received no adverse comments.

II. Final Action

The EPA is approving and incorporating by reference into the Washington SIP the submitted changes to WAC 463-78-005, *Adoption by Reference*, State effective August 26, 2019, and the corresponding submitted updates to EFSEC's adoption by reference of the following sections of Chapter 173-400 WAC:

- 173-400-111, 173-400-116, 173-400-710, 173-400-720, 173-400-730, 173-400-810, 173-400-830, 173-400-840, 173-400-850, State effective July 01, 2016;
- 173-400-025, 173-400-030, 173-400-040, 173-400-050, 173-400-171, 173-400-740, State effective September 16, 2018; and
- 173-400-060 and 173-400-105, State effective November 25, 2018.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in the amendments set forth to 40 CFR part 52 below. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these

materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

¹ 62 FR 27968 (May 22, 1997).

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not address technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted in this preamble and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided

state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated May 16, 2019.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 13, 2019.

Chris Hladick,
Regional Administrator,
Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

2. Amend § 52.2470(c), Table 3, by:

a. Revising the entry “78-005”; and

b. Under the heading “Washington Administrative Code, Chapter 173-400 Regulations

Incorporated by Reference in WAC 463-78-005”:

i. Adding the entry “173-400-025” in numerical order;

ii. Revising the entry “173-400-030”;

iii. Adding the entry “173-400-030(30)&(36)” in numerical order;

iv. Revising the entry “173-400-040”;

v. Adding the entry “173-400-040(2)” in numerical order; and

vi. Revising the entries “173-400-050”, “173-400-060”, “173-400-105”, “173-400-111”, “173-400-116”, “173-400-171”, “173-400-710”, “173-400-720”, “173-400-730”, “173-400-740”, “173-400-810”, “173-400-830”, “173-400-840”, and “173-400-850”.

The revisions and additions read as follows:

§ 52.2470 Identification of plan.

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(c) * * *

TABLE 3—ADDITIONAL REGULATIONS APPROVED FOR THE ENERGY FACILITIES SITE**EVALUATION COUNCIL (EFSEC) JURISDICTION**

[See the SIP-approved provisions of WAC 463-78-020 for jurisdictional applicability]

State citation	Title/subject	State effective date	EPA approval date	Explanations
Washington Administrative Code, Chapter 463-78 – General and Operating Permit Regulations for Air Pollution Sources				
78-005	Adoption by Reference	8/26/19	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Subsection (1) only. See below for the updated Chapter 173-400 WAC provisions adopted by reference and submitted to the EPA for approval.
*	*	*	*	*
Washington Administrative Code, Chapter 173-400 Regulations Incorporated by Reference in WAC 463-78-005				
173-400-025	Adoption of Federal Rules	9/16/18	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
173-400-030	Definitions	9/16/18	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Except: 173-400-030(6); 173-400-030(32); 173-400-030(38); 173-400-030(45); 173-400-030(83); 173-400-030(89); 173-400-030(96); 173-400-030(97); 173-400-030(100); 173-400-030(103); 173-400-030(104).
173-400-030(30)&(36)	Definitions	12/29/12	5/30/17, 82 FR 24533	
*	*	*	*	*
173-400-040	General Standards for Maximum Emissions	9/16/18	[Insert date of publication in the Federal Register],	Except: 173-400-040(2); 173-400-040(3);

			[Insert Federal Register citation]	173-400-040(5).
173-400-040(2)	General Standards for Maximum Emissions	4/1/11	5/30/17, 82 FR 24533	Except: 173-400-040(2)(c); 173-400-040(2)(d).
173-400-050	Emission Standards for Combustion and Incineration Units	9/16/18	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Except: 173-400-050(2); 173-400-050(4); 173-400-050(5); 173-400-050(6).
173-400-060	Emission Standards for General Process Units	11/25/18	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
173-400-105	Records, Monitoring, and Reporting	11/25/18	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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173-400-111	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources	07/01/16	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Except: 173-400-111(3)(h); The part of 173-400-111(8)(a)(v) that says, <ul style="list-style-type: none"> “and 173-460-040,”; 173-400-111(9).
* * * * *				
173-400-116	Increment Protection	07/01/16	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
173-400-171	Public Notice and Opportunity for Public Comment	9/16/18	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	Except: The part of 173-400-171(3)(b) that says, <ul style="list-style-type: none"> “or any increase in emissions of a toxic air pollutant above the acceptable source

				impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”; 173-400-171(3)(o); 173-400-171(12).		
*	*	*	*	*	*	*
173-400-710	Definitions	07/01/16	[Insert date of publication in the Federal Register], [Insert <u>Federal Register</u> citation]			
173-400-720	Prevention of Significant Deterioration (PSD)	07/01/16	[Insert date of publication in the Federal Register], [Insert <u>Federal Register</u> citation]	Except: 173-400-720(4)(a)(i through iv) and 173-400-720(4)(b)(iii)(C).		
173-400-730	Prevention of Significant Deterioration Application Processing Procedures	07/01/16	[Insert date of publication in the Federal Register], [Insert <u>Federal Register</u> citation]			
173-400-740	PSD Permitting Public Involvement Requirements	9/16/18	[Insert date of publication in the Federal Register], [Insert <u>Federal Register</u> citation]			
*	*	*	*	*	*	*
173-400-810	Major Stationary Source and Major Modification Definitions	07/01/16	[Insert date of publication in the Federal Register], [Insert <u>Federal Register</u> citation]			
*	*	*	*	*	*	*
173-400-830	Permitting Requirements	07/01/16	[Insert date of publication in the Federal Register], [Insert <u>Federal Register</u> citation]			
173-400-840	Emission Offset Requirements	07/01/16	[Insert date of publication in the			

			Federal Register], [Insert <u>Federal</u> <u>Register</u> citation]	
173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL)	07/01/16	[Insert date of publication in the Federal Register], [Insert <u>Federal</u> <u>Register</u> citation]	
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